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7 Attorneys for Debtor

8 In re:

Chapter 11 Proceeding

9 Glen Halvorson, MD PLLC,

Case No.: 2:18-bk-13508-BKM

10 Debtor.

**DEBTOR'S EMERGENCY
MOTION FOR ORDER
AUTHORIZING DEBTOR TO
MAINTAIN EXISTING BANK
ACCOUNTS**

11
12 Glen Halvorson, MD PLLC, the Debtor and Debtor-in-Possession in the above-
13 captioned Chapter 11 case ("Debtor"), hereby submits this motion (the "Motion"), seeking
14 entry of an order, pursuant to sections 105(a) and 363 of title 11 of the United States Code,
15 §§ 101-1532 (the "Bankruptcy Code"): authorizing the Debtor to maintain its existing bank
16 accounts to allow the Debtor to continue to receive direct deposit Medicare and Medicaid
17 payments. In support of this Motion, the Debtor relies on the *Declaration of Glen Halvorson,*
18 *MD in Support of First Day Motions* (the "Declaration"). In further support of this Motion,
19 the Debtor respectfully submits as follows:

20 **Background**

21 1. On November 2, 2018 (the "Petition Date"), the Debtor commenced its case
22 (the "Chapter 11 Case") under chapter 11 of the Bankruptcy Code. The Debtor continued
23 to operate its businesses and manage its property as debtor in possession pursuant to
24 sections 1107(a) and 1108 of the Bankruptcy Code. As of the date hereof, no trustee,
25 examiner, or official committee of unsecured creditors has been appointed in the Debtor's
26 Chapter 11 Case.

27 2. The Debtor provides diagnostic testing and analysis to patients of referring
28 treating physicians. Specifically, the Debtor provides electromyography (EMG) diagnostic

1 procedures to assess the health of muscles and the nerves that control them. An EMG is
2 often done in combination with a Nerve Conduction Study (NCS). Together the EMG and
3 NCS tests analyze the electrical activity in nerves and help diagnose symptoms of:
4 numbness, tingling, pain, weakness, or cramping.

5 3. The Debtor maintains and utilize a total of two (2) bank accounts (collectively,
6 the "Bank Accounts"), which are maintained at or through Wells Fargo, N.A. and OneAZ
7 Credit Union ("Credit Union"). Wells Fargo is on the United States Trustee's list of
8 "approved depositories" for bankruptcy estate funds (the "Authorized Depository List").
9 Though Credit Union is a member of the FDIC, Credit Union is not included on the
10 Authorized Depository List. However, the Debtor submits that, as set forth in greater detail
11 below, good cause exists to allow the Debtor to continue its banking relationship with
12 Credit Union.

13 4. Upon information and belief, immediately after the Petition Date, Credit
14 Union and Wells Fargo (collectively, the "Banks") will not authorize the Debtor to continue
15 the use of the Bank Accounts until the Court issues an order authorizing the Banks to allow
16 the Debtor to continue to use the Bank Accounts.

17 5. As the Debtor accepts Medicare and Medicaid payments, the Bank
18 Accounts are subject to certain restrictions. Specifically, anti-assignment rules require
19 Medicare and Medicaid payments to be made only to a bank account that is under the sole
20 control of the provider, and any governmental payments must be made into a lockbox
21 account. Medicare and Medicaid payments are currently being deposited directly into the
22 Bank Accounts.

23 5. The Office of the United States Trustee for this region (the "U.S. Trustee") has
24 established certain Operating Guidelines for Chapter 11 Cases (the "Guidelines") relating to
25 the banking and cash management practices of debtors in possession. The Guidelines
26 require chapter 11 debtors to, among other things: (i) close all existing bank accounts and
27 open new debtor in possession bank accounts; (ii) label the face of all checks obtained for
28 the new accounts with the phrase "debtor in possession," the bankruptcy case number, and

1 the type of account; and (iii) deposit any funds held by the bankruptcy estate in an insured
2 or collateralized account with a financial institution that the U.S. Trustee has designated as
3 an "authorized depository."

4 **Relief Requested**

5 Through this Motion, the Debtor respectfully requests, among other things, a waiver
6 of certain of the Guidelines that otherwise would require the Debtor to close all prepetition
7 bank accounts. Specifically, pursuant to sections 105, 363, and 503 of the Bankruptcy Code,
8 the Debtor request that this Court enter an order authorizing the Debtor to continue the
9 maintenance and use of its prepetition Bank Accounts, and granting it such other and
10 further relief to which it may be justly entitled. Debtor is able to open new debtor in
11 possession bank accounts to act as operating accounts for the Debtor, into which funds
12 from the Bank Accounts will be transferred. However, without the requested relief, the
13 Debtor submits that it would be unable to conduct its financial operations effectively and
14 efficiently, which would cause significant harm to the Debtor and its estate.

15 The Debtor believes that the continuation of the Bank Accounts is essential to enable
16 a smooth transition into chapter 11. As set forth above, the Guidelines mandate the closure
17 of the Debtor's prepetition bank accounts. Requiring the Debtor to close its existing Bank
18 Accounts and open new accounts would impose a significant and unnecessary
19 administrative burden upon the Debtor. Specifically, because the Debtor accepts
20 Medicare and Medicaid payments, the Bank Accounts are subject to certain restrictions.
21 These restrictions include anti-assignment rules requiring Medicare and Medicaid
22 payments to be made only to a bank account that is under the sole control of the Debtor,
23 and any governmental payments must be made into these lockbox accounts. If
24 Medicare or Medicaid receivables were assigned to another account, such assignment
25 could violate the anti-assignment rules and result in the termination of the provider
26 agreement. Further, applying to change the accounts could significantly delay
27 reimbursement and cash flow for the Debtor.
28

1 WHEREFORE, Debtor respectfully requests that the Bankruptcy Court enter its
2 Order authorizing the Debtor to maintain its existing bank accounts. A form of Order is
3 submitted herewith.

4
5 RESPECTFULLY SUBMITTED this 13th day of November, 2018.

6
7 /s/ Bryan W. Goodman
8 Bryan W. Goodman
9 GOODMAN & GOODMAN, PLC
10 Attorneys for Debtor

11 **E-FILED** on November 13, 2018 with the
12 U.S. Bankruptcy Court and copies served
13 via ECF notice on all parties that have
14 appeared in the case.

15 **COPY** mailed the same date via U.S. Mail to:
16 Office of the U.S. Trustee
17 230 N. First Avenue, Suite 204
18 Phoenix, AZ 85003-1706
19 All parties on Debtors' Master Mailing Lists

20 **COPY** e-mailed the same date to:
21 Patty Chan, Trial Attorney
22 Office of the U.S. Trustee
23 230 North First Avenue, Suite 204
24 Phoenix, AZ 85003
25 Patty.Chan@usdoj.gov

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6 **Exhibit "A"**
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10 **THE UNITED STATES BANKRUPTCY COURT**
11 **FOR THE DISTRICT OF ARIZONA**

12 In re:

Chapter 11 Proceeding

13
14 Glen Halvorson, MD PLLC,

Case No.: 2:18-bk-13508-BKM

15 Debtor.

16 **STIPULATED ORDER GRANTING**
17 **DEBTOR'S MOTION FOR ORDER**
18 **AUTHORIZING DEBTORS TO**
MAINTAIN EXISTING BANK
ACCOUNTS

19 Upon consideration of the motion (the "Motion") of the Debtor for entry of an Order,
20 pursuant to sections 105(a) and 503 of the Bankruptcy Code, authorizing it to maintain
21 existing bank accounts; and the Court having determined sufficient cause appearing
22 therefor,

23 **IT IS HEREBY ORDERED THAT:**

- 24 1. The Motion is GRANTED.
- 25 2. The Debtor's Bank Accounts with Wells Fargo, N.A. and OneAZ Credit Union
- 26 ("Prepetition Accounts") may be kept open by the Debtor with the same account numbers
- 27 as existed prior to the Petition Date (i.e., November 2, 2018). On a weekly basis, Debtor will
- 28

1 sweep all funds from the Prepetition Accounts into a debtor-in-possession account ("DIP
2 Account") that is open with an authorized depository.

3 3. The Debtor cannot pay for any expenses from the Prepetition Accounts.
4 Instead, all of Debtor's post-Petition expenses will be paid from the DIP Account, including
5 payments for any service fees or charges associated with the Bank Accounts.

6 4. All information regarding deposits and transfers of funds into or out of the
7 Bank Accounts shall be timely disclosed in the Debtor's monthly operating reports.

8 5. After the Petition Date, Wells Fargo, N.A. and OneAZ Credit Union
9 (collectively, the "Banks"), and subject to the terms of this Order, are authorized and
10 directed to continue to maintain, service, and administer the Bank Accounts as they were
11 maintained prepetition, without interruption and in the usual and ordinary course of
12 business.

13
14 **DATED AND SIGNED ABOVE**

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16 **Signature Line:**

17 ILENE J. LASHINSKY
18 United States Trustee
19 District of Arizona

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21 PATTY CHAN
22 Trial Attorney
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